

Docket No. SA-IC0056-CON2

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Jessica M. SUNSHINE, et al.

Group Art Unit: 2623

Serial No.: 10/821,928

Examiner: Vikkram Bali

Filed: April 12, 2004

For: METHOD FOR SELECTING REPRESENTATIVE ENDMEMBER
COMPONENTS FROM SPECTRAL DATAFAX RECEIVED
FEB 09 2006
OFFICE OF PETITIONSPETITION TO WITHDRAW APPLICATION FROM ISSUE UNDER 37 C.F.R.
§1.313(c)(2) TO PERMIT CONSIDERATION OF A REQUEST FOR
CONTINUED EXAMINATION UNDER 37 C.F.R. §1.114U.S. Patent and Trademark Office
Customer Service Window, Mail Stop 313(c)
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

The undersigned received a Notice of Allowance and Fees Due dated October 18, 2005 in connection with the above-referenced continuation application. On December 6, 2005, after telephonic discussions with Examiner Bali, the undersigned submitted a PTO-1449 form via the USPTO general fax number to Examiner Bali for signature (see attached). The PTO-1449 contained only those references that were necessarily considered by the Examiner during prosecution per MPEP 609.02(A)(2) as each reference was cited in at least one of the applications to which the current application claims priority.

Several telephone conversations were had with the Examiner regarding the status of the IDS submission. On January 18, 2006, 1449 still had not been received by the Examiner,

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and a decision was made to pay the issue fee. On February 6, 2006, undersigned received a formal Notice from the Examiner stating that:

1. The information disclosure statement filed 12/6/2005 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.
2. The information disclosure statement filed 12/6/2005 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

The PTO-1449 submitted by the undersigned for signature was not submitted as an Information Disclosure Statement as the references cited therein were already considered by the Examiner per MPEP 609.02(A)(2), "the examiner **will consider** information which has been considered by the office in a parent application when examining (A) a continuation application filed under 37 C.F.R. 1.53(b)" (emphasis added). Rather the PTO-1449 was submitted for signature in order to have the references listed on the face of the forthcoming patent per MPEP 609.02(A)(2). Unfortunately, since the Examiner has now stated that he did not consider the references listed in violation of MPEP 609.02(A)(2), the undersigned respectfully submits this Petition Under 37 C.F.R. 1.313 with the Request for Continued Examination to ensure consideration of the references contained therein and to clarify the record in this case.

The undersigned hereby petitions the Office to withdraw the above-identified application from issue to permit consideration of a Request for Continued Examination (RCE) in compliance with 37 C.F.R. §1.114. The application is not yet scheduled to issue. The Request for Continued Examination with Information Disclosure Statement submission is attached. A credit card payment form (PTO-2038) for the Petition fee of \$130.00 as set forth in 37 C.F.R. §1.17(h) and the RCE fee of \$790.00 as set forth in 37 C.F.R. § 1.17(e) is attached. The Commissioner is hereby authorized to charge any additional fees required

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under 37 C.F.R. § 1.16 or 1.17, or credit any overpayment, to Deposit Account No. 50-1458.

In view of the foregoing, the undersigned respectfully requests expedited review of this Petition, that this Petition be granted, and that the Information Disclosure Statement be considered by the Examiner in the Continued Examination of this application. If the Petition is granted, a call to the undersigned attorney is respectfully requested.

Respectfully submitted,

Date: 2/9/06

By: /Dawn-Marie Bey – Reg. No. 44,442/
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